A

ONG THYE PENG

v.

LOO CHOO TENG & ORS

B

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
HASHIM YUSOFF FCJ
ZULKEFLI MAKINUDIN FCJ
[CIVIL APPEAL NO: 02-7-2006 (P)]

C

3 JUNE 2009

CONSTITUTIONAL LAW: *Courts - Federal Court - Jurisdiction of Federal Court to review its earlier decision - Rules of the Federal Court 1995, r. 137 - Rule 137 does not confer unlimited power to review - Limited inherent jurisdiction to review - Finality of decision - No relitigation of appeal - Issues raised for review already dealt with in judgment of Federal Court - Whether case suitable for review - Contradictions in interpretation of law not a case for review*

D

E

CIVIL PROCEDURE: *Jurisdiction - Federal Court - Jurisdiction to review earlier decision - Rules of the Federal Court 1995, r. 137 - Rule 137 does not confer unlimited power to review - Limited inherent jurisdiction to review - Finality of decision - No relitigation of appeal - Issues raised for review already dealt with in judgment of Federal Court - Whether case suitable for review - Contradictions in interpretation of law not a case for review*

F

CIVIL PROCEDURE: *Parties - Locus standi - Right to appeal - Beneficiary of estate - Whether beneficiary entitled to appeal to Federal Court - Whether beneficiary a proper party with an interest in outcome of suit*

G

Pursuant to an order of the High Court, a Sale and Purchase Agreement ("the SPA") in respect of properties belonging to the testator was entered into between the first and second

H

respondents as vendors/trustees and the third to the eighth respondents as purchasers. The vendors later applied to the High Court for sanction to sell the subject land in accordance with Probate and Administration Act 1959 ("Act 97"). The court made an order granting formal sanction of the sale. The appellant, a

I

beneficiary, appealed to the Court of Appeal against the decision of the High Court sanctioning the sale. The appellant's appeal to the Court of Appeal was dismissed. However, the appellant's

appeal to the Federal Court was allowed. The purchasers then applied by way of notice of motion to have the decision of the Federal Court reviewed and reheard pursuant to r. 137 of the Rules of the Federal Court 1995 ("RFC") to prevent injustice or to prevent an abuse of the process of the court. The purchasers claimed that the Federal Court through the judgment of Augustine Paul FCJ had erred in law when the learned judge held that s. 60(3) of Act 97 was applicable to the application for sanction of the SPA. Learned counsel for the purchasers, *inter alia*, submitted that: (i) s. 60(3) of Act 97 has no application in respect of sale by executors; (ii) since the sale here was made by the trustees with the consent of all the beneficiaries of the estate of the testator and pursuant to an order of court, the relevant provisions applicable therefore were ss. 16, 17 and 59 of the Trustee Act 1949 and not s. 60 of Act 97; (iii) the appellant as a beneficiary had no right to challenge the sale except under s. 17(1) of the Trustee Act 1949.

Held
Per Zulkefli Makinudin FCJ:

(1) Rule 137 of RFC does not actually confer jurisdiction on the Federal Court to hear any application or to make any order to prevent injustice or abuse of the process of the court. Rule 137 cannot be construed as conferring upon the Federal Court unlimited power to review its earlier decision for whatever purpose. The court only has the limited "inherent' power or "inherent jurisdiction" in order to maintain its character as a court of justice. (para 6)

(2) The appellant was a beneficiary of the estate and was also one of the defendants in the High Court. He was therefore a proper party with an interest in the outcome of the suit in the High Court. As a party to the civil suit, the appellant was entitled to appeal against the High Court's decision and subsequently against the Court of Appeal decision. (para 14)

(3) The issues raised by the purchasers in this motion for review were actually issues that had been duly considered and dealt with in the judgment of the Federal Court. The Federal Court did not agree with the purchasers on the issues raised and on their interpretation and/or application of certain laws such as s. 60 of Act 97. This was not a suitable case for a review by the Federal Court sitting as another panel of the Federal

Court. The findings of the Federal Court in this case both in law and on facts were matters of opinion. Even assuming the present panel disagreed with such findings made by the earlier panel of the Federal Court, that was not a ground that warranted a review of the decision. (para 15)

(4) The strict requirement as to finality as enunciated in *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* applied full force here. To relitigate a case which has been heard and disposed off by the Federal Court is not one of the circumstances envisaged by r. 137 for the Federal Court to entertain. (para 15)

Bahasa Malaysia *Translation Of Headnotes*

Berikutan dengan suatu perintah Mahkamah Tinggi, suatu Perjanjian Jual Beli ('SPA') berkenaan dengan hartanah kepunyaan pewasiat yang dibuat di antara responden-responden pertama dan kedua sebagai penjual/pemegang amanah dan responden-responden ketiga hingga kelapan sebagai pembeli. Penjual selepas itu memohon kepada Mahkamah Tinggi untuk kebenaran untuk menjual tanah itu mengikut Akta Probet dan Pentadbiran 1959 ('Akta 97'). Mahkamah membuat suatu perintah yang memberikan kebenaran formal jualan itu. Perayu, seorang benefisiari, merayu kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi membenarkan jualan itu. Rayuan perayu kepada Mahkamah Rayuan ditolak. Walau bagaimanapun, rayuan perayu kepada Mahkamah Persekutuan dibenarkan. Pembeli selepas itu memohon melalui notis usul bagi keputusan Mahkamah Persekutuan itu dikaji semula dan didengar semula berikutan dengan k. 137 Kaedah-kaedah Mahkamah Persekutuan ('KMP') untuk mencegah ketidakadilan atau untuk menghalang suatu penyalahgunaan proses mahkamah. Pembeli mendakwa bahawa Mahkamah Persekutuan melalui penghakiman Augustine Paul HMP telah khilaf dalam undang-undang apabila yang arif hakim telah mendapati bahawa s. 60(3) Akta 97 terpakai kepada permohonan untuk kebenaran SPA itu. Yang arif peguam pembeli, antara lain, menghujah bahawa: (i) s. 60(3) Akta 97 tidak terpakai berkenaan dengan jualan oleh wasi-wasi; (ii) oleh kerana jualan di sini dibuat oleh pemegang amanah dengan keizinan semua benefisiari estet pewasiat dan berikutan dengan perintah mahkamah, peruntukan-peruntukan relevan yang patut dipakai, oleh itu, ialah ss. 16, 17 dan 59 Akta Pemegang Amanah 1949 ('Akta') dan bukan s. 60 Akta 97; (iii) perayu sebagai benefisiari tidak berhak untuk mencabar jualan itu kecuali di bawah s. 17(1) Akta.

Diputuskan
Oleh Zulkefli Makinudin HMP:

(1) Kaedah 137 KMP tidak sebenarnya memberi bidang kuasa kepada Mahkamah Persekutuan untuk membicara apa-apa permohonan atau untuk membuat apa-apa perintah untuk mencegah ketidakadilan atau penyalahgunaan proses mahkamah. Kaedah 137 tidak boleh ditafsirkan sebagai memberi Mahkamah Persekutuan kuasa tidak terhad untuk mengkaji semula keputusannya yang lebih awal bagi apa-apa tujuan pun. Mahkamah hanya mempunyai kuasa terhad "sedia ada" atau "bidang kuasa sedia ada" supaya mengekalkan perwatakannya sebagai sebuah mahkamah keadilan.

(2) Perayu merupakan seorang benefisiari estet itu dan juga salah seorang dari defendan-defendan di Mahkamah Tinggi. Beliau, oleh itu, merupakan suatu pihak yang betul dengan kepentingan dalam hasil guaman itu dalam Mahkamah Tinggi. Sebagai satu pihak kepada guaman sivil itu, perayu berhak merayu terhadap keputusan Mahkamah Tinggi dan selepas itu terhadap keputusan Mahkamah Rayuan.

(3) Isu-isu yang dibangkit oleh pembeli dalam usul untuk mengkaji semula ini ialah sebenarnya isu-isu yang telahpun dipertimbangkan dan diselesaikan dalam penghakiman Mahkamah Persekutuan. Mahkamah Persekutuan tidak bersetuju dengan pembeli atas isu-isu yang dibangkit dan atas tafsiran dan/atau pemakaian mereka berkenaan dengan beberapa undang-undang seperti s. 60 Akta 97. Ini bukanlah kes yang sesuai untuk dikaji semula oleh Mahkamah Persekutuan yang bersidang sebagai panel yang lain Mahkamah Persekutuan. Dapatan-dapatan Mahkamah Persekutuan dalam kes ini dalam kedua-dua undang-undang dan fakta-fakta ialah soal pendapat masing-masing. Jikapun seandainya panel semasa tidak setuju dengan dapatan-dapatan sebegitu yang dibuat oleh panel yang lebih awal Mahkamah Persekutuan, itu bukanlah alasan yang mewajarkan suatu pengkajian semula keputusan itu.

(4) Keperluan ketat mengenai kemuktamadan seperti yang dikatakan dalam *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumimoto Insurance (Malaysia) Bhd* terpakai dengan sepenuhnya di sini. Untuk melitigasi semula suatu kes yang telah dibicara

dan diselesaikan oleh Mahkamah Persekutuan bukan salah satu halkeadaan yang dijangkakan oleh k. 137 untuk dilayani oleh Mahkamah Persekutuan.

Case(s) referred to:

Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***

Yap Yoke Luan & Ors v. Ong Wee Tok & Ors [1983] 2 CLJ 252; [1983] CLJ (Rep) 433 FC ***(refd)***

Legislation referred to:

Probate and Administration Act 1959, s. 60(3), (4)
Rules of the Federal Court 1995, r. 137
Trustee Act 1949, ss. 16, 17(1), 59

For the appellant - DP Vijandran (Ong Kheng Leong with him); M/s Ghazi & Lim

For the 1st & 2nd respondents - K Prakash; M/s Shook Lin & Bok

For the 3rd-8th respondents/applicants - Dato' Mahinder Singh Dulku (Dato' R Rajasingam with him); M/s R Rajasingam & Co

[Appeal from Court of Appeal; Civil Appeal No: P-02-804-2000]

Reported by Amutha Suppayah

JUDGMENT

Zulkefli Makinudin FCJ:

[1] This is an application by the third to the eighth respondents by way of notice of motion to have the decision of the Federal Court in Civil Appeal No. 02-7-2006 (P) ("the appeal case") reviewed and reheard pursuant to r. 137 of the Rules of the Federal Court 1995 ("RFC") to prevent injustice or to prevent an abuse of the process of the court.

Background

[2] The relevant background facts leading to the present application by the third to the eighth respondents may be summarized as follows:

(1) Pursuant to the order of court dated 25 August 1975 made in Penang High Court Originating Summon No. 156 of 1975 the sale and purchase agreement in respect of landed

properties belonging to the testator was entered into between the first and second respondents as duly appointed trustees by the court and the third to the eighth respondents as purchasers on 8 January 1979.

(2) The order of court dated 25 August 1975 referred to above, *inter alia*, reads as follows:

> AND IT IS FURTHER ORDERED that the Testator's immovable property be sold with the approbation of the Judge free from encumbrances (if any) and subject to the encumbrances (if any) of such of them as shall be agreed upon AND IT IS FURTHER ORDERED that the Applicant's and the Defendants' Solicitors do have the joint conduct of the sale of all the immovable property of the Testator still remaining unsold AND IT IS FURTHER ORDERED that the proceeds of sale of the Testator's immovable property be paid into Court to the credit of these proceedings subject to further Orders.

(3) The sale and purchase agreement dated 8 January 1979 is subject to the following terms and conditions:

(i) The purchase price is calculated at the price of RM1.60 per square foot,

(ii) Deposit is 5% of the purchase price or RM150,000.

(iii) The subject land being released from compulsorily acquisition by the State Authority of Penang.

(iv) Formal sanction to sell in accordance with the Probate and Administration Act 1959 ("Act 97").

(v) Completion is within six months from the date of order of court sanctioning the sale by the trustees.

(vi) If the acquisition of the land is not released within two years from the date of the agreement, it shall be null and void.

(vii) Purchasers entitled to specific performance of the Agreement.

(viii) Time shall be the essence.

(ix) If the purchasers default in payment of the balance purchase price, deposit will be forfeited by the trustees.

(4) The State Authority duly released the said land from compulsorily acquisition within two years but the vendors (the first and second respondents) refused to apply for "approbation of the judge" in respect of the sale in accordance with the express terms of court order dated 25 August 1975 referred to above.

(5) Pursuant to Civil Suit No. 8 of 1981, the third to the eighth respondents (purchasers) sued the first and second respondents (vendors), *inter alia*, for specific performance of the sale and purchase agreement dated 8 January 1979 ("the first action").

(6) The appellant was allowed to intervene in the first action referred to above and was added as the fourth defendant.

(7) In the course of the proceedings of the first action the appellant also applied to amend his defence by including, *inter alia*, an allegation that the first and second respondents had no power to execute the sale and purchase agreement dated 8 January 1979. With regard to the allegation in the proposed amendment that the land was sold at an under value, the learned High Court Judge refused leave to amend. No appeal was filed by the appellant against such refusal.

(8) On 9 September 1997, the court allowed the purchasers' claim in the first action and decreed specific performance in terms of the sale and purchase agreement dated 8 January 1979.

(9) The first and second respondents and the appellant appealed to the Court of Appeal *vide* Civil Appeals No. P-02-556-1997 and P-02-593-1997 against the decree of specific performance of the High Court in the first action.

(10) On 21 February 2000, the Court of Appeal dismissed both the above appeals and affirmed the decision of the High Court in the first action but varied the order by decreeing specific performance on terms that the vendors apply to court for formal sanction as provided for in cl. 8 of the sale and purchase agreement and that in the event the vendors defaulted in applying for a formal sanction, the third to the eighth respondents shall be at liberty to obtain the court's formal approval to sell the property to them and should the

sanction be refused, it would be opened to the vendors to move for the decree to be vacated on the ground of impossibility of performance.

(11) By Originating Summons No. 24-330-2000 dated 25 February 2000 ("the second action"), the first and second respondents applied to the High Court for permission to sell the subject land pursuant to cl. 8 of the sale and purchase agreement dated 8 January 1979 in accordance with Act 97 at the market value of the said land at the date of the approval of the court or at such other price as may deem fit and proper by the court.

(12) The court made an order granting formal sanction of the sale and this is to all intents and purposes in tandem with the order of court dated 25 August 1975 and the order of the Court of Appeal dated 21 February 2000.

(13) The appellant appealed to the Court of Appeal *vide* Civil Appeal No. P-02-804-2000 against the decision of the High Court sanctioning the sale referred to above.

(14) The first and second respondents did not appeal against the decision of the High Court sanctioning the sale referred to above and therefore the order of the High Court has become a final order in so far as the first and second respondents as vendors under the said agreement are concerned.

(15) The appellant's appeal was heard by the Court of Appeal and by a majority decision, the appeal was dismissed with costs.

(16) Pursuant to the leave granted by the Federal Court, the appellant appealed to the Federal Court *vide* Civil Appeal No. 02-7-2006(P).

(17) The Federal Court by a unanimous decision on 24 January 2007 allowed the appellant's appeal with costs.

Contention Of The Third To The Eighth Respondents

[3] It is the contention of the third to the eighth respondents that the Federal Court through the judgment of Augustine Paul, FCJ in the appeal case had erred in law when the learned judge held that s. 60(3) of Act 97 is applicable to the application made by the first and second respondents in the High Court for

A sanction of the sale and purchase agreement dated 8 January 1979 and that the principle of law decided in cases coming under s. 60(4) of Act 97 are equally applicable to cases coming under s. 60(3) of Act 97. Learned counsel for the third to the eighth respondents submitted that s. 60(4) of Act 97 is only applicable B for application made by the administrator of the estate intestate and s. 60(3) of Act 97 is only applicable for application made by the executor of the estate of the testator. Learned counsel for the third to the eighth respondents further submitted that s. 60(3) of Act 97 has no application whatsoever in respect of sale by C executors.

[4] It was highlighted to us by learned counsel for the third to the eighth respondents that in this particular case, the sale was made by the trustees with the consent of all the beneficiaries of D the estate of the testator and was made pursuant to the order of court dated 25 August 1975 subject to the approbation (sanction) of the judge. It was therefore contended that the relevant provisions applicable to the facts of this case are ss. 16, 17 and 59 of the Trustee Act 1949 and that s. 60 of Act 97 has no E application in its entirety. In the circumstances of the case, it was submitted for the third to the eighth respondents that the very foundation of the judgment of the Federal Court is destroyed and therefore is a nullity.

F **[5]** The third to the eighth respondents also submitted that the appellant as a beneficiary has no right to challenge the sale except under s. 17(1) of the Trustee Act 1949. The appellant's earlier attempt to challenge the sale on the ground of under valuation (by proposed amendment) was rejected by the court including the G power of the trustees to enter into the sale and purchase agreement. The appellant is therefore estopped from contending otherwise.

Scope Of r. 137

H **[6]** It must be noted at the outset that r. 137 of RFC does not actually confer jurisdiction on the Federal Court to hear any application or to make any order to prevent injustice or abuse of the process of the court. Rule 137 cannot be construed as conferring upon the Federal Court unlimited power to review its I earlier decision for whatever purpose. The court only has the limited "inherent' power or "inherent jurisdiction" in order to maintain its character as a court of justice. His lordship Zaki Tun

Azmi, PCA (as he then was) in the case of *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1 has succinctly laid out the limited or exceptional circumstances where the court has exercised its discretion to invoke r. 137 at pp. 15-16 as follows:

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(a) That there was a lack of quorum eg, the court was not duly constituted as two of the three presiding judges had retired. (*Chia Yan Tek & Anor. v. Ng Swee Kiat & Anor.* [2001] 4 CLJ 61).

C

(b) The applicant had been denied the right to have his appeal heard on merits by the appellate court. (*Megat Najmuddin bin Dato Seri (Dr.) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645).

D

(c) Where the decision had been obtained by fraud or suppression of material evidence. (*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577).

E

(d) Where the court making the decision was not properly constituted, was illegal or was lacking jurisdiction, but the lack of jurisdiction is not confined to the standing of the quorum that rendered the impungned decision. (*Allied Capital Sdn. Bhd v. Mohd Latiff bin Shah Mohd & Another Application* [2004] 4 CLJ 350).

F

(e) Clear infringement of the law. (*Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565).

(f) It does not apply where the findings of this court is questioned, whether in law or on the facts (since these are matters of opinion which this court may disagree with its earlier panel). (*Chan Yock Cher @ Chan Yock Kher v. Chan Teong Peng* [2005] 4 CLJ 29).

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(g) Where an applicant under rule 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard. (*Raja Prithwi Chand v. Sukhraj Rai* AIR [1941] FC 1).

H

(h) Where bias had been established. (*Taylor & Anor. v. Lawrence & Anor.* [2002] 2 All ER 353).

(i) Where it is demonstrated that the integrity of its earlier decision had been critically undermined eg, where the process had been corrupted and a wrong result might have been arrived at. (*Re Uddin* [2005] 3 All ER 550).

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(j) Where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and Court of Appeal. (*Joceline Tan Poh Choo & Ors. v. V. Muthusamy* [2007] 5 AMR 725; [2007] 6 MLJ 485).

Decision

[7] A challenge has been made by the third to the eighth respondents on the judgment of the Federal Court in the appeal case that it had embarked upon an exercise of unauthorized legislation or that there has been an infringement of the law by the court in arriving at its decision. With respect we could not agree with the contention of the third to the eighth respondents. It is necessary that we list out herein the four questions on which leave had been given that were before the Federal Court in the appeal case as follows:

(i) Whether the principle applicable to the sale of immovable trust property as stated in the Federal Court case of *Yap Yoke Luan & Ors v. Ong Wee Tok & Ors* [1983] 2 CLJ 252; [1983] CLJ (Rep) 433 *viz* the court in deciding whether the best possible price had been obtained for the estate, "the court is concerned that the price is a reasonable one not at the time the offer is made but at the time of the hearing of the application for sanction to the sale", is also applicable in respect of sales of immovable properties belonging to the estate of a deceased by trustees who are appointed by an order of court.

(ii) Whether, when an order of Specific Performance in respect of an agreement for sale of trust property is specifically decreed to be "on terms that it be subject to obtaining of sanction", the court is required to formally grant such sanction on the contract price or whether the court, may, in the exercise of its discretion, grant sanction at a price other than the contract price in the interest of the beneficiaries of the estate, or to refuse to grant of sanction.

(iii) Whether the beneficiaries of an estate of person who dies testate should, in law, be entitled to the same measure of protection as that afforded to beneficiaries under the provisions of Probate & Administration Act 1959 and judicial pronouncement thereof.

(iv) Whether when a sale of estate property is expressly "subject to sanction from the court, in accordance with the Probate & Administration Act 1959", the primary function of the court is to consider the interest of the beneficiaries to the estate of the deceased and, in particular adhere to the legal principle that whether the price is a reasonable one is not at the time the offer was made but at the time of the hearing of the application of the proposed sale.

[8] We noted that the Federal Court in the appeal case had dealt with and delivered judgment on all the above questions. The issues raised under this motion for review by the third to the eighth respondents were the very same issues raised and argued before the Federal Court and considered in the judgment of the Federal Court.

[9] On the issue raised by the third to the eighth respondents that the decision of the Federal Court is contrary to law and relevant statutory provisions and in particular the statutory provisions governing sale by trustees and executors, we find that the law in respect of this issue was dealt with at length in the judgment of the Federal Court in respect of questions No. 3 and No. 4. (See pp. 32-40 and pp. 41-51 of the judgment).

[10] On the issue that parties cannot by contract or consent create or confer jurisdiction on a court where jurisdiction is wholly statutory as contended by the third to the eighth respondents, we find this issue was fully dealt with in the judgment of the Federal Court at pp. 41-42 as follows:

> One of the submissions of learned counsel for the respondents was that parties cannot confer such a jurisdiction on a court by agreement when there is no statutory provision to that effect on the authority of *Re Hooker's Settlement, Heron v. Public Trustees & Ors.* [1954] 3 All ER 321 and *Bank Negara Indonesia v. Philip Hoalim* [*56] [1973] 2 MLJ 3. It was therefore contended that as section 60(4) of the 1959 Act is only applicable to a sale by an administrator. Clause 8 of the agreement cannot confer such jurisdiction thereby rendering ineffective the requirement of the formal sanction.
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> This submission overlooks section 60(3) of the 1959 Act and the factual matrix of this case.

[11] The Federal Court then proceeded to a detailed consideration of the matter and concluded at p. 50 of its judgment as follows:

> The property and legality of clause 8 of the agreement is therefore discernible with ease. It has been inserted in the agreement to comply with the requirement of the order of court dated 25 August 1975 reproduced earlier. The restriction imposed on the disposal of property as stated in the will of the deceased therefore remains with the result that it can be disposed of only pursuant to an order of court as provided by section 60(3) of the 1959 Act. It cannot therefore be argued that clause 8 seeks to confer jurisdiction on a court without any authority.

[12] On the issue of "fair value" where the third to the eighth respondents alleged that the appellant ought not to have been heard especially where his application to amend his defence in the civil suit to raise the inadequacy of value was rejected and he had withdrawn his appeal, the Federal Court took cognisance of this issue as to what should be the fair value and found as follows at p. 51 of the judgment:

> As stated in answer to question No. 3, the duty of the court is to ensure that the estate benefits as much as possible so as to accord with established principles. It follows that the answer to question No. 4 is that the relevant date for determining the reasonableness of the price of the property is the date of hearing of the application.
>
> The corollary to the answer to question No. 4 is that it cannot be argued that a vendor cannot depart from the agreed price for the sale. As the reasonableness of the price is at the date of approval of the court it follows that the earlier agreed price can be disregarded.

[13] It is to be noted here that the adequacy of value was a live issue in the originating summons which gave rise to the current appeal and was an issue thoroughly argued by all parties at all three tiers. The Federal Court rightly considered this issue as stated above.

[14] The third to the eighth respondents have also challenged on the appellant's right to present his appeal before the Federal Court. They contended that the appellant is a stranger and thus lacks privity to the contract of sale to challenge or otherwise interfere with the performance of the trustees or to deny the purchasers their right under the agreement of sale. On this point

it is our considered view that the appellant is a beneficiary of the estate and was also one of the defendants in the High Court. He was therefore a proper party with an interest in the outcome of the suit in the High Court. No application was made to strike out the defendant (appellant) as a party. As a party the appellant fully participated in the hearing. As a party to the civil suit the appellant was entitled to appeal against the High Court's decision and subsequently against the Court of Appeal decision.

[15] It is clear that the issues now raised by the third to the eighth respondents in this motion for review are actually issues that have been duly considered and dealt with in the judgment of the Federal Court in the said appeal case. The Federal Court did not agree with the third to the eighth respondents on these issues and on their interpretation and/or application of certain laws such as s. 60 of the Act 97. We are of the view that this is not a suitable case for a review by us sitting as another panel of the Federal Court. We are now dealing with a matter of interpretation or application of the law that has already been made by the Federal Court. The findings of the Federal Court in this case both in law and on facts are matters of opinion. Even assuming we disagree with such findings made by the earlier panel of this court, that is not a ground that warrants us to review the decision. (See the case of *Chan Yock Cher @ Chan Yock Kher v. Chan Teong Peng (supra)*). The strict requirement as to finality as enunciated in the *Asean Security*'s case and other cases apply full force here. Otherwise there would be no end to the circular process that this motion for review seeks to initiate. It is our considered view to relitigate a case which has been heard and disposed of by this apex court is therefore not one of the circumstances envisaged by r. 137 for this court (the Federal Court) to entertain.

[16] For the reasons above stated we would dismiss this application with costs.